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## BOOK REVIEWS.

CASES ON THE LAW OF TRUSTS. By Thaddeus Davis Kenneson. American Case Book Series. West Publishing Company, St. Paul. 1911. Pp. 621, XVI.

Since 1893, the presentation of the subject of Trusts in teaching has been largely through the medium of the second edition of Ames' Cases on Trusts, which appeared in that year. The collection of cases by the late Dean of the Harvard Law School upon this subject may well be considered one of his most important contributions to the scholarly study of the law as a science. Unique in its arrangement at the time of its publication, it points out in cases the historical development of the so-called common law trust, and the tendency and pressure of time progress which, creating new circumstances, unaccustomed relationships, led into the Courts of Chancery the subtleties of legal and equitable rights and estates. The result of its use through nearly two decades has confirmed the conviction of the collator that the arrangement was well adapted to the teaching of this subject. Whatever improvements the experience of that time has made desirable, it would seem, could have been made by the publication of a third edition, enlarging in some respects, culling in others, and in all annotating to date.

The presentation of a new collection of cases on Trusts, may therefore be questioned as a measure of economy in erudite labors. That the series of case books, of which this is a part, should be fully rounded out and have an entire completeness of subject matter seems hardly so necessary to the success of the system that the lack of a real demand, and may we say, need for this particular part of it should be overlooked. The laudable purpose of the system would seem not to be jeopardized by the omission from the list of subjects already well taught by the aid of existing and widely known collections of cases. The new book has not departed from the outline of subject made by Dean Ames save in minor respects, and in the addition of three new chapters at the end, dealing with the tracing of trust property, the constructive trust and the Statute of Frauds, and the Statutes of Limitation. The undoubted value of the careful sub-division of the general topics is thus retained. This is even well elaborated in a two-page index at the end of the volume. The proper emphasis is thus, by mechanical placing of cases under proper and unambiguous headings, secured at once, saving the student the perplexity that frequently results from an inability to understand the case book compiler's purpose.

The limited time available for class room work makes it desirable that the case book should annotate the less important rules, or exceptions or variations of rules which occur in any subject. Such notes are not digests, but all important extensions of fundamental rules, new treatment of old principles, and important dissents, should be carefully and fully annotated within reason. An examination of the notes in the present volume does not convince one that this result has been accomplished in all instances. Take the case of bank deposits in trust, the leading case of *Martin v. Funk, Admr. et al.*, 75 N. Y. 134 (1878), is reprinted, but there is an entire absence of annotation in this important subject. The student might well believe such declaration of trust was absolute at the time of the deposit, or that in no jurisdiction was notice to the beneficiary necessary to complete the trust. Important cases like *Welch v. Henshaw*, 170 Mass. 409, and *Scrivens v. Sav. Bank*, 166 Mass. 255, are omitted from the notes. Likewise it would seem that the most important question of gifts to charitable uses is not adequately presented by printing *Morice v. Bishop of Durham* alone. This is a fault, it is submitted, and one made in all case books on trusts. The importance of this subject

may be easily seen by referring to the current State reports, where decision follows decision affecting charitable trusts, their creation, validity and administration by court or trustee. Not only is the problem of the Bishop's case important, but the fine and somewhat subtle points into which the subject divides, should be given a more adequate treatment.

In the very excellent note upon Gifts, on page 71, the editor adopts fully the views of Dean Ames upon gifts of choses in action, and in many respects repeats the annotations in Ames' *Cas. Tr.*, though adding many valuable recent cases. Among the latter the omission of *Talbot v. Talbot*, 78 Atl. 535 (R. I. 1911), is unfortunate as presenting a recent view of the question, and an able discussion of the problem. The Uniform Stock Transfer Act now before the Legislatures of the several States, and likely to be passed by many, would be an important reference.

The doctrine of the Master of the Rolls in *In re Johnson*, 15 Ch. D. 548 (1879), and of the general subject of transfer by act of trustee's creditors, is given the presentation its importance requires in section seven of the editor's third chapter. On page 282, the editor's note takes the position that the relation of agent and undisclosed principal is that of trustee and *cestui que trust*. This is evidently based upon the English authorities holding that the recovery by the creditor from the principal when discovered, depends upon the state of accounts between the latter and the agent. If the position taken be sound, the American cases, many of which deny the result of the English decisions, are not correctly decided, and they are in direct conflict with *In re Johnson*. It would seem reference might profitably be made to them. In the annotation to the case last referred to, either in the note on page 292, or on page 296, or on page 302, no cases are cited subsequent to 1890 with one exception, *Adams v. Albert*, 155 N. Y. 356, 49 N. E. 929 (1898); and no reference is made to the important case of *Newell v. Hadley*, 91 N. E. 912 (Mass. 1910), where the dictum of *Mason v. Pomeroy*, 151 Mass. 164 (1890), was ignored by the Massachusetts Supreme Court. In fact the comparative absence throughout the book, of annotations of cases during the past twenty years would almost induce the belief that the law of trusts during that period, had not been changed nor extended, but had at last reached that state of tranquil crystallization where issues do not arise and enactments seeking uniformity are superfluous. Did the digests but confirm this belief, the century since the chancellorship of Lord Eldon would be stamped with the mark of an achievement unrivalled in any other respect, and the name of that famous dignitary of the woolsack entitled to still greater commemoration and respect.

In subject matter, we are inclined to think the most serious omission from Mr. Kenneson's collection of cases, is of all reference to the scope and the limitation of the common law trust. The characteristics of the equitable trust as distinguished from similar rights enforceable at law, is developed by Dean Ames in the first five sections of his book. This important and highly interesting part of the law of trusts is not presented at all in the present book. The section upon the Creation of Trusts deals with many important methods of creating trusts or rights enforceable in Equity as trusts, but the general principles with respect to the nature of a trust, deducible from the cases given, are not clear and defined. Nor does the section appear adequately to give a full conception of the *extent* of equitable rights in the nature of trusts. Though we may question the wisdom of Ames' attempt to teach the law of bank deposits and collections by the aid of three cases and footnotes, yet they well illustrate the class of problems the topic Creation of Trusts should include. The matter given by Mr. Kenneson is valuable. The objection to his work is what he has omitted. The trust, once found and established, is not so difficult a problem; its recognition remains to perplex the unwary.

The well-known case of *Sharlington v. Stratton*, 1 Plowden, 298 (Queen's Bench, 1565), is reprinted by the editor. The famous argument of the Apprentice is published in full. On page 30 of the present book appears

the following: "As if I promise to give you £20 to make your *sale de novo*, here you shall not have an action against me for £20, as it is affirmed in the said case in 17 Edw. IV for it is a nude pact, *et ex nudo pacto non oritur actio*." The original report reads (page 308b), "*Sicōe ieo promise a doner a vous xx li. pur faire votre sale de nouel, icy vous naueres action vers moy pur les xx li. come il est affirme en le dit case in 17 E. 4 sup. fo. 305 b. car e nude pact, et ex nudo facto non oritur actio.*"

The translation given is that made in all the translated reports of Plowden starting with the first in 1792. On page 114 of Ames' Cases Trusts (2nd Ed.) the same translation is made. The possible inaccuracy of such a translation is suggested. The expression "to make your *sale de novo*" would mean the problem of consideration for successive promises of performance of the same thing. If that be the true meaning of the Apprentice, he settled long ago a most difficult question of modern contract law. But Dean Ames has suggested in correspondence with Mr. Crawford D. Henning, of the Pennsylvania Law School, that the word "sale" should be translated not into English letter for letter, but treating it as Norman French. into "hall" or "house," of which the modern French equivalent is "salle." With such translation the argument reads: "I promise to give to you £20 to make your house *de novo*," i. e., to rebuild your house, and of course, it is a *nudum pactum* unless it can be construed a request that he shall rebuild. This meaning appears more in accordance with the trend of the argument, is consistent translation, and not based upon the assumption that the original reports were written in hybrid fashion, interposing English words into the Norman. "Sale" is so translated in the Norman French dictionaries. Moreover, the classical illustration for argument, at that date, was the carpenter's contract to build your house. This excusable and ancient error has crept into Mr. Kenneson's collection of cases.

R. J. B.

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### BOOKS RECEIVED.

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TOWNES' ELEMENTARY LAW, Second Edition. By Jno. C. Townes, LL. D. Chicago: T. H. Flood & Co. 1911.

LIABILITY OF RAILROADS TO INTERSTATE EMPLOYEES. By Philip F. Doherty. Boston: Little, Brown & Co. 1911. Three dollars net.

PROCEEDINGS OF THE ILLINOIS STATE BAR ASSOCIATION, THIRTY-FIFTH ANNUAL MEETING. Chicago: John F. Voigt, Secy. 1911.

THE SHADOW MEN. By Donald Richberg. Chicago: Forbes & Co. 1911.